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## THE INTER-STATE RAILWAY SOLVENT.

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THE Inter-State Commerce problem does not seem to have advanced much towards a satisfactory solution, although we have had what was so long delayed, and what has been all the time essential to its solution, Congressional action. A specific, however, is not likely to cure a chronic disease, but even if the disease can be brought to the surface, and present for a time a more aggravated appearance, it may be a step in advance. Faults in the legislation of this country are not a new thing ; we do not address ourselves to the application of remedies with the directness of an absolute government, nor even with that of a popular government where the people surrender their prerogatives for a time to the sway of a responsible officer—which is the present characteristic of Great Britain—but there is a holding back by the party or individuals of the party in power, and a timidity in action that is unfavorable to the expression of pronounced and highly intelligent ideas. Power is held by so slight a tenure with us, not only by a party, but, presuming the party stays in power, by particular individuals of the party, that the thing first to do is to hug the popular sentiment, even though that sentiment be ignorant, misled, and utterly without grasp of the necessity of the situation. Our statesmanship then does not so much seek to grasp the situation as the popular interpretation of the situation, and public spirit ordinarily does not get further than to seek office, and retain it afterwards. It is natural for a man of ordinary disinterestedness to believe that he can administer an office to which he aspires equally well or better than another man, and, having obtained an office, he feels it is better to make what he regards, perhaps, only a slight surrender of his best wisdom, rather than to turn over his position to another ; but “the only way into truth is to enact your insight,” and the man who halts and holds back from the expression of his highest wisdom is not the man to grapple with and

bring out of confusion a matter intertwined with truth and falsehood, and with conflicting private and public advantage.

In saying this there may be no special value, but it calls attention to the unpreparedness of the national legislative mind and the lack of surrender of that mind to the solution of the railroad problem, and that it is but natural, consequently, that the country should grope in getting out of the difficulty.

The administration of railroads has become bone of the bone and flesh of the flesh of the public affairs of this country, and these affairs are so public that they no longer admit of a purely private administration ; and it has been the fault of government with us that this point has not been foreseen, that it has become a serious matter before it has been taken up, and, worse than this, that we are even now destitute of any special wisdom as to how we should grapple with it.

The present Inter-State Commerce Law does not fairly combine even any two schools of thought in regard to the solution of the Inter-State railroad problem, and much less is it the expression of any one school of thought. Nobody, consequently, supports the law as it now stands with any heartiness. It is supported because it is a law, because it is the presumed wisdom, or compromised wisdom, of Congress upon the subject, and it has a special body of officers, selected with great care by the President, whose duty it is to see that it is enforced. The main feature of its passage was that the country wanted something upon the subject, that it was not best even to leave it over until another Congress, and, in the conflicting ideas, there was a general consensus to let something go through upon the subject, not very special reference being had as to what that something might be. Under this pressure of showing a result, the law fell short of showing the "average" wisdom of Congress upon the subject. This first act of "something" having been done, and that something having been demonstrated to possess no particular wisdom upon the subject, the next step to get at is—what is wisdom upon it?

In the first place, the force of the law is mostly spent upon the long and short haul clause, which has not been one of the burning questions of railroad administration in this country. The long and short haul clause affects localities, whereas the chief objection in our railroading is in the aggrandizement of individuals—the wealth and the power, in railroading and out of it,

that has come to individuals, that in a measure has changed the character of our institutions, that has greatly changed the relative condition of individuals, and that is threatening further changes of these kinds, and is alarming to the public mind.

This enormous power and wealth to individuals is, first, in the individual ownership and management of railroads, and, second, in the control of the business of the country, that has been given over to other individuals by those controlling the railroads. The former power comes, stating it in the most succinct form, through stock manipulation, the latter through freight discrimination.

In advancing this subject towards a solution, I cannot see wherein it is not unfortunate that such prominence should have been given to the long and short haul clause—that is, to locality—when this is not, and it is not possible that it should be, a national issue. The extreme aggrandizement of individuals is a national issue, as the great railroad man, holding his power through changes of party administration and through a succession of individuals holding high offices, is more important in the affairs of the country than one holding any elective office, and this is a change of the most extraordinary kind, not of our written, but of our unwritten constitution. The constitution of no country or government can be embodied in a state paper for any great length of time ; the men of one generation cannot lay down the law completely for the men of another generation, nor can the subtle changes from one period to another be recognized as changes and find a formal constitutional record. Each generation has to govern itself very largely without help from any preceding generation, and too much and too greatly revered automatic governing machinery may be an evil. As soon as a man ceases to be alone he has to be more or less governed ; this pertains to marriage, to the family, to private and natural defense and aggrandizement ; and transportation in the development it has received in the nineteenth century is perhaps the chief of these. Transportation in this country undoubtedly exceeds its importance in any other country. This is on account of our extent, the promise of development before us, and the greatly variegated products of the different parts of the country, making exchange of these products over great distances of the utmost consequence. The chief nations of Europe have international affairs, and the preser-

vation of their own boundaries and autonomies, to develop statesmanship of the first class. We do not have these spurs to statesmanship, and are of the order of people, supposed to be the most happy order, that has the least history. In this way transportation becomes for us of this country the greatest subject of our time. As our government has been constituted since the rebellion, its administration has not offered the greatest prizes for individual ambition, but these have been found in the administration of the affairs of railroads and other branches of transportation. This is because the tenure of power is longer, and the opportunities of individual wealth much greater. The office-holder may have the shadow of power, but the transportation magnate has the substance. If, to the holder of high office, there was the tenure of power such as rules, say, in Great Britain, the equilibrium of the affairs of this nation would be better, the railroad man would be held in check,—he would not weigh so heavily in courts, Congress, legislatures, lobbies, conventions, caucuses, and at the polls ; and there awaits us development in one of two directions—men powerful in office, able to impose a policy and regimen upon the country, or transportation affairs so passed over into the affairs of the administration of the relations of one to another,—become affairs of government,—that the transportation magnate sinks to the level of the competitive citizen, although he may be a very rich one, as is now the case with many bankers and merchants. Unless one of these courses is pursued, our institutions, as they have been known, are substantially at an end. Free institutions cannot exist with the wealth of the country practically at the command of irresponsible individuals, as has been the case since the railroads arrived at their pre-eminence. As I have cited, this has come through stock manipulation and freight discrimination. It is the old problem of government, whether individual or national, taking new form : there cannot be two masters. The individual cannot serve God and Mammon. Our predecessors could not live on territory part slave and part free, nor can we live under an oligarchy with unrestrained power for the absorption of wealth and maintain free institutions. A cursory view of this absorption of wealth shows : 1st, the railroads “manipulated” into the hands of a comparatively few ; 2d, manufacturing, trading, mining, and stock-raising annex businesses to railroading through discriminations ; 3d, the pockets of Eastern

land-holders emptied into the pockets of railroad magnates, who are the chief Western land-holders, by the cheap means of mechanical transportation East and West, and the consequent depreciation of the values of Eastern lands. He who has saved money by other occupations is likely, sooner or later, to have it swallowed up by one of these vortexes, as a surplus of money implies some form of investment.

It is the misfortune of the country that a law has been enacted that overslaughs by diversion of attention the most important features of railroad administration, discrimination and stock manipulation ; that has attempted to substitute arbitrary law where natural law should control, nature having preceded railroads in establishing favored places by sea, and lake, and river transportation, and that destroys the last result of highly organized transportation, the railroad federation or pool.

A patient trial of the present law might inhibit the evils of discrimination and stock manipulation, as the first is positively forbidden, and the publicity of facts, made obligatory, might in time root out the latter. But the energies of the Commission, as the law now stands, with the pressure upon it from the long and short haul clause, can but imperfectly reach this portion of the act.

It is impossible to equalize, in points of advantage, all parts of this country ; and, as nature established the precedent of favoring one locality at the expense of another, it is not reasonable to expect that, in changing the chief method of transportation from water to rail, this precedent can be annulled, although the favored localities may not be entirely the same as they were before.

The pool is an extraordinary convenience at least. With an uncontrolled private ownership of railroads, it might be a terrible instrument of oppression, and by rooting out competition, and by fixing such rates of transportation as it might choose, and directly, or through its agents, entering upon the business of trading, as well as transporting (which was at one time the case with the Standard Oil Company—that company acting as the pool agent for oil transportation), it might absorb in an extraordinarily short time the wealth of the country. But the pool with an intelligent and honest government supervision takes all complication out of transportation, and raises its powers to the highest efficiency.

It is possible there may come a time in the affairs of trans-

portation when there will be more or less regulation regarding locality, but this is one of the niceties of the question that cannot be successfully reached while government oversight is in a crude state. This issue cannot well be national, as the friends of action for locality (which I repeat is the principle of the long and short haul) are likely to be arrayed each for his own locality, and against another locality when specific action comes. The attempt to treat this, in the present inchoate state of the subject, disappoints the country on the relation of the government to transportation. It makes the judicious grieve, but the magnate of transportation laugh. And fancy the feelings of a Commissioner, with discretionary powers, trying to do that which nature never did, and which no way has yet been invented for finite man to do!

The preponderating fault of the law is that it attempts to do altogether too much ; it is a nineteenth century bull against the comet, a Texan steer running amuck in a china shop.

It is grounded first on the idea that the railroad manager must not be scotched but killed, that there has been no evolution worth preserving in railroad management, that the whole subject can be reconstructed on *à priori* ideas, that railroading in its entirety is reeking with abuse, and that the true American has not come to the front in its management.

Speaking more definitely, Mr. Reagan in the House represented the *à priori* idea of settling the railroad problem, and was able to impose his views upon the majority, while Mr. Cullom in the Senate, with the majority of that body with him, accepted principles that have been plainly evolved as good ones, and attempted to discriminate against the abuses that have grown up in the system. Between these forces, neither party yielding to the other, but both willing to give way that something might be done without much reference to how intelligent that something might be, we have the present hotchpotch of a law, which has resulted in giving the railroads advantages over the public that they did not possess before.

We have it now demonstrated that one law does not settle the railroad problem, and, unfortunately, this law has not put us in the way to learn much upon the subject, as what it has done more than anything else is to establish confusion where confusion did not exist, and divert attention from the true gist of the question. Under these circumstances, it is not to be expected that the next

Congress will be able to act very wisely ; the subject is vastly too intricate for ready solution, and all now living and taking an interest in public affairs are likely to see their course pretty well advanced before it can be eliminated from a controversial position in the public mind.

The difficulties of settling the question are congenital, as the framers of our constitution knew not railroads, and, in looking into it to see what may be formulated there that applies to them, there is the greatest room for latitude of opinion. This is unfavorable to the development of knowledge upon the subject, except as that is forced by dire experience. The public mind of the country ignored the whole subject of the relation of the government to railroads until it was forced by events ; but now the point is reached that something has to be done, that it is right to do something, and that to do something is harmonious with the constitution. We have been getting "judge-made law" on the subject pretty fast for a few years, and now stand on the ground, from the federal standpoint, that no state can legislate on transportation that pertains to two states, and that the federal government has full power, and exclusive power, on all transportation from one state to another state. With the volume of our inter-state commerce, this makes the judicial and legislative field of the federal government in transportation very large.

Railroad transportation of the country as it pertains to regulation, may be classified as follows :

- 1st. Railroads that run from state to state.
- 2d. Commodities and passengers that are moved from state to state.
- 3d. Railroads that are located wholly in one state.
- 4th. Commodities and passengers moved wholly within one state.

There is no further controversy to take place on the first two of these propositions, as it is settled in the public mind and in the courts that the federal authority has exclusive jurisdiction. The establishment of the federal authority regarding the second proposition also establishes it in a measure regarding the third proposition, as a railroad located wholly in one state participates in moving commodities from one state to another, and this brings it in a measure under the domain of the federal authority. But is it reasonable, practicable, and in the line of efficient

regulation to let it stop here? It is a nice division in the business of a railroad to know what is state and what is inter-state, almost too nice to follow with exactness for practical results. A railroad participates in inter-state commerce; it sells tickets to passengers that are good over its line and over lines in other states; it honors tickets in the same way held by passengers coming from other states, and the same principle is true regarding the movement of commodities. It is too much of an abstraction to draw a line and say, the part of the business of the railroad that is done wholly in one state the authority of the federal government in no way relates to and cannot touch. The fact that the railroad participates in the national and federal business at all—is an instrument of inter-state commerce—is sufficient to make it amenable in all its business to the national and federal law. The adoption of this principle would not include the railroads of municipalities, the ordinary street car lines, where no recognition is taken of a passenger's destination or whence he comes.

But it is desirable in this country to localize the exercise of authority as much as possible, to distribute it among the various states. And this is specially true regarding neighboring citizens and corporations. Let the federal law on the subject be so framed that a state law, made in harmony with and to carry out the same provisions as those of the federal law shall have jurisdiction, within the territory of that state, and if a state does not legislate to this effect the federal law to be supreme. This would give to each state the option to do for its own citizens what otherwise the federal law would do: it would establish uniformity of law regarding railroad transportation throughout the country, and at the same time it would maintain the local jurisdiction of each state, unless it voluntarily surrenders it.

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